IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

WP(C).No. 29789 of 2007(U)

OS.454/2007 of ADDL.SUB COURT,KOLLAM
.....

PETITIONER: DEFENDANT

HYMAVATHI, AGED 65 YEARS,
M/O LATE ANILAL, RAVI VILASAM,
THARAVADU JUNCTION, THAZHUTHALACHERRY,
THAZHUTHALA VILALGE, KOTTIYAM, KOLLAM.

BY ADV. SRI.V.V.RAJA
SRI.R.RENJITH

RESPONDENT: PLAINTIFF

SABU V., AGED 36 YEARS,
S/O VASUDEVAN, THUNDUVILA VEEDU,
THAZHUTHALA CHERRY, THAZHUTHALA VILLAGE,
KOTTIYAM, KOLLAM.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.Krishnan, J.

==========

W.P(C).No.29789 of 2007

==========

Dated this the 9th day of October, 2007.

JUDGMENT

This Writ Petition is filed challenging the order of the Additional Subordinate Judge, Kollam in I.A.No.3829 of 2007 in O.S.No.454 of 2007. The suit is one for reralisation of the amount borrowed by the son of the defendant in the case and quite unfortunately, the son along with the wife and the child ended their lives and the mother being the sole legal heir of the son, is faced with an action initiated by the parties and is in a pathetic situation.

2. Along with the suit, an application for attachment of a running bus was made and it was ordered by the court. Thereafter, on entering appearance, the court held that the attachment can be released provided there is furnishing of security for the amount. One has to take into consideration the peculiar and the pathetic situation of the defendant in this case. It is averred in the plaint that the amount is borrowed and it is

also evident that there are a lot of liabilities for the deceased son.

3. I am told by the learned counsel for the writ petitioner that the son was having an extent of 14 cents of land with a residential building and it has been attached in another case, O.S.No.203 of 2007 pending before the same court. If the amount claimed in that suit is such that it does not require the entire property, then the court can consider whether the very same property can be offered as security in this case as well. The court has to take into consideration the factum of the poor defendant and if a running bus also is stalled then the question of survival may be become very difficult. So this aspect may be taken into consideration and I direct the court below to consider whether the property which is attempted to be offered as security is sufficient and then pass appropriate orders releasing the order of attachment.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 10/10